

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN THE MATTER OF THE	§
PETITION OF TERRANCE A.	§ No. 268, 2010
BENSON FOR A WRIT OF	§
MANDAMUS	§

Submitted: May 18, 2010

Decided: June 29, 2010

Before **STEELE**, Chief Justice, **HOLLAND** and **RIDGELY**, Justices

ORDER

This 29th day of June 2010, it appears to the Court that:

(1) The petitioner, Terrance A. Benson, seeks to invoke this Court's original jurisdiction to issue an extraordinary writ of mandamus¹ to compel the Superior Court to act upon his motion for credit for Level V time served. The State of Delaware has filed an answer requesting that Benson's petition be dismissed. We find that Benson's petition manifestly fails to invoke the original jurisdiction of this Court. Accordingly, the petition must be dismissed.

(2) In January 2005, Benson pleaded guilty to Possession with Intent to Deliver a Narcotic Schedule II Controlled Substance. He was sentenced to 15 years of Level V incarceration, to be suspended after 3 years for decreasing levels of supervision. In February 2009, Benson was found to

¹ Del. Const. art. IV, §11(6); Supr. Ct. R. 43.

have committed a violation of probation (“VOP”) and was re-sentenced to 10 years of Level V incarceration, to be suspended after 3 years for decreasing levels of supervision. On October 20, 2009, Benson filed a motion for credit for Level V time served claiming that he was entitled to credit for 68 days spent at Level V prior to his release on bail in 2009.

(3) In his petition for a writ of mandamus, Benson claims that the Superior Court has not timely acted on his petition. The record reflects that, on May 10, 2010, the Superior Court granted Benson’s motion and signed a modified sentencing order granting him credit for 75 days of Level V time served.

(4) A writ of mandamus is an extraordinary remedy issued by this Court to compel a trial court to perform a duty.² As a condition precedent to the issuance of the writ, the petitioner must demonstrate that a) he has a clear right to the performance of the duty; b) no other adequate remedy is available; and c) the trial court has arbitrarily failed or refused to perform its duty.³

² *In re Bordley*, 545 A.2d 619, 620 (Del. 1988).

³ *Id.*

(5) There is no basis for a writ of mandamus in this case because the Superior Court already has acted on Benson's motion for credit for Level V time served. Benson's petition must, therefore, be dismissed as moot.⁴

NOW, THEREFORE, IT IS ORDERED that the petition for a writ of mandamus is DISMISSED.

BY THE COURT:

/s/ Myron T. Steele
Chief Justice

⁴ The Supreme Court docket reflects that, by letter dated May 14, 2010, Benson requested that his petition be dismissed without prejudice. The Clerk then advised Benson that any dismissal must be "with prejudice" and asked him to clarify his request by May 27, 2010. Benson did not file a response.